



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
RANDOLPH MICHAEL FORLENZA

Serial No.: **09/549,966**

Filed: **April 14, 2000**

For: **EXTENSION OF BROWSER WEB
PAGE CONTENT LABELS AND
PASSWORD CHECKING TO
COMMUNICATIONS PROTOCOLS**

Attorney Docket No. **AUS000072US1**

Examiner: **Tam V. Nguyen**

Art Unit: **2172**

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RESPONSE F UNDER 37 CFR § 1.116

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Sir:

This Response is submitted in response to the Advisory Action dated March 23, 2004. It is believed that no fee is required by this response; however, in the event any additional fees are required, please charge any such fee to **IBM Corporation Deposit Account Number 09-0447**.

CERTIFICATE OF MAILING
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Signature of Person Signing

RESPONSE TO ADVISORY ACTION

This Response is submitted in response to the Final Office Action dated November 18, 2003, having a shortened statutory period set to expire February 18, 2004, and further in response to the Advisory Actions dated January 8, 2004, February 18, 2004, and March 23, 2004. Applicants respectfully request reconsideration of the final rejection in view of the arguments below and the attached IDS as such materially reduces issues on appeal.

I. Declaration Submitted under 37 C.F.R. § 1.131

On the continuation sheet for the Advisory Action dated March 23, 2004. The Examiner has stated that no consideration was made of the Declaration submitted under 37 CFR §1.131. The Examiner supports this lack of consideration based on MPEP 715.09. It is stated therein that the declaration must be timely presented in order to be admitted. It is further specified therein that Declarations are considered timely if submitted:

- (A) prior to a final rejection;*
- (B) before appeal in an application not having a final rejection; or*
- (C) after final rejection and submitted*
 - (1) with first reply after final rejection for the purpose of overcoming a new ground of rejection or requirement made in the final rejection, or*
 - (2) with a satisfactory showing under 37 CFR 1.116(b) or 37 1.195, or*
 - (3) under 37 CFR 1.129(a).*

Applicants respectfully submit that our declaration under § 1.131 was timely submitted under either (C)(1) or (C)(2).

First, with respect to timely filing under MPEP 715.09 (C)(1), our declaration was submitted in response to the extensive and detailed Advisory Action dated January 8, 2004. In that Advisory Action, the Examiner raised new grounds of rejection in the present application and explicitly cited a new prior art reference, Internet Content Rating Association, that had not been previously cited by the examiner in this case. In fact, a new form PTO 892 submitting this

new reference into the record was provided along with the Advisory Action. The only connection this new grounds of rejection had with the Final Rejection was the RSAC, but, as has been argued in Applicant's Response D, nothing in RSAC, as taught in the IE4 reference and screen shots presented in the Final Office Action suggested the present invention, which forced the Examiner to present the new reference as support of the rejection. Therefore, by submitting a declaration under § 1.131 to overcome this new reference, Applicants were in essence submitting the declaration with a "first reply" after a new final rejection for the purposes of overcoming a new ground of rejection, as is required under MPEP 715.09.

Second, under MPEP 715.09 (C)(2), Applicants respectfully submit that the declaration should properly be admitted pursuant to 37 CFR § 1.195. Applicants' submitted this declaration as a direct response to first learning of the existence of this reference in the Advisory Action received just one month prior. Applicants' submission in its very next response, and shortly after the Examiner cited this new reference, could not have been submitted any sooner by any reasonable standard. Consequently, Applicants believe they have met the requirements under 37 CFR § 1.195 of showing good and sufficient reason why this Declaration was not earlier presented. Consequently, pursuant to MPEP 715.09 (C)(2), Applicants respectfully submit that the Examiner was mistaken in not admitting the Declaration and respectfully requests reconsideration.

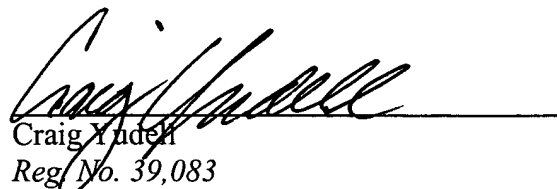
II. Consideration of IDS

On the continuation page of the Advisory Action dated March 23, 2004, the Examiner has stated that the IDS submitted by Applicants on February 2, 2004, has not been considered by the Examiner. The Examiner cited MPEP 609 and 37 CFR § 1.97(c) as justification for not considering the submitted IDS. However, Applicants were not submitting the IDS pursuant to § 1.97(c) but rather were submitting it pursuant to § 1.97 (d). As is clearly explained in MPEP 609, an IDS submitted pursuant to § 1.97 (d) shall be considered by the Office if filed by the Applicant after the period specified (c), provided that the IDS is filed on or before payment of the issue fee and is accompanied by a statement specified in paragraph (e) of § 1.197 and a fee as set forth in § 1.17(p). Therefore, the Examiner was in error in not considering the IDS therein

submitted. To avoid any doubt, Applicants have again submitted this IDS pursuant to 37 CFR § 1.97(d), and believe that this IDS must be considered by the Office as required by the CFR and MPEP.

Applicants further respectfully point out that, notwithstanding whether or not the present IDS should be considered by the Examiner, the Examiner is under an obligation to consider the evidence submitted by Applicants in response to the rejection. Applicants' respectfully point out that any evidence submitted in support of their arguments and in support of patentability must be considered by the Examiner, whether or not such information is submitted within an IDS. MPEP 609 C(3)) states "to the extent that a document is submitted as evidence directed to an issue of patentability raised in an Office Action and the evidence is timely presented, Applicants need not satisfy the requirements of 37 CFR §1.97 and 37 CFR §1.98 in order to have the Examiner consider the information contained in the document relied on by Applicants. In other words, compliance with the information disclosure rules is not a threshold requirement to have information considered when submitted by Applicants to support an argument being made in reply to an Office Action." It is again noted that the evidence presented in the IDS was directed squarely to invalidate as a reference the ICRA, which had first been presented as support for the rejection in the immediately preceding Office response. Applicants again respectfully request reconsideration of the rejection of the pending claims in the present application in light of the arguments and evidence Applicants' submitted in their Response E filed on February 2, 2004.

Respectfully submitted,



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